

## REMARKS

The Office Action mailed October 29, 2004 has been carefully reviewed. Reconsideration of this application is respectfully requested.

### **Amendments to Specification**

It is submitted that the amendments being made to the specification do not introduce new matter into the disclosure of this application. Support for the amendment to the title and paragraph 56 can be found, for example, on page 9 where it is stated that the “present invention includes a portable system for unloading fluids such as diesel fuel from one tank to another ...” (*emphasis added*). In paragraph 11, it is stated that the preferred liquid being transferred is diesel fuel. Thus, deletion of “diesel” from the title makes the title more accurate. The remaining amendments to the specification are being made merely to correct typographical errors.

### **Restriction Requirement**

The Examiner stated that affirmation of Applicants’ provisional election with traverse to prosecute the invention of Group I, claims 1-22 must be made by Applicants in replying to the Office Action. Applicants hereby affirm the provisional election. Claims 23-29 have been canceled from this application without prejudice or disclaimer. Such cancellation does not require the inventorship corresponding to this application to be amended.

### **Claim Rejection – 35 U.S.C. § 102**

The Examiner rejected claims 1-4, 7, 9, 10 and 13-15 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,213,515 B1 to La Terra (hereinafter “La Terra”). In connection with this rejection, the Examiner stated that the La Terra discloses a trailer-mounted aircraft refueling apparatus comprising a pump (unlabeled), a diesel fuel powered engine 19, a flow meter 36, an inlet hose 14, and an outlet hose 26.

It is respectfully submitted that the Examiner's rejection of claims 1-4, 7, 9, 10 and 13-15 under 35 U.S.C. § 102(b) as being anticipated by La Terra is improper. La Terra discloses a cart for refueling aircraft from pressurized underground fuel mains accessed by hydrants located on airport aprons. The cart includes a refueling platform 20 which can be hydraulically raised and lowered and upon which an aircraft refueling operator can stand. An extendible hydrant hose 14 has a coupler 15 for connection to an airport fuel hydrant. A fuel conveying boom 24 conveys fuel from the hydrant hose 14 to one or more fuel hoses 26 at the platform 20. The fuel hoses 26 convey fuel to the aircraft. The system includes a fuel meter 36. A diesel engine 19 drives a hydraulic pump which powers hydraulic motors for propelling the cart and provides fluid for hydraulically raising and lowering the platform 20. The engine 19 also operates an air compressor 21 for operation of the hydrant valve.

Independent claims 1 and 9 each call for numerous elements that are not included in the cart disclosed by La Terra. First, the system called for by each of claims 1 and 9 comprises a trailer adapted for connection to a vehicle. The cart disclosed by La Terra is self propelled – it is not a trailer. The La Terra cart is towable for maintenance purposes, but nothing indicates that it is intended to be towable for use in remote locations, which is the essence of the present invention. For example, La Terra states: “[w]here it is necessary to transport the cart, for example for maintenance, it is towed by another vehicle, or moved by means of a trailer.” Thus, the La Terra cart is not a trailer.

Further, independent claims 1 and 9, as amended, each call for a pump mounted on the trailer for pumping the liquid from the first tank to the second tank and having an inlet and an outlet. La Terra does not disclose a pump for pumping liquid from a first tank to a second tank. The La Terra invention relates to hydrant service carts used in the refueling of aircraft from

pressurized underground mains accessed by hydrants at the loading/unloading aprons of airports. *See column 1, lines 4-7.* It is disclosed that the engine 19 “also operates an air compressor 21 for operation of the hydrant valve, although this may be substituted by a product-driven compressor.” (*emphasis added*). *See column 2, lines 34-37.* However, there is nothing to indicate that the air compressor 21 or substituted product-driven compressor is used to pump fuel from one tank to another. The fact that the underground mains from which the fuel is obtained are pressurized indicates such a function is not necessary.

Similarly, unlike the system called for by each of claims 1 and 9, the La Terra cart does not include an engine mounted in the trailer and adapted for driving a pump for pumping the liquid from a first tank to a second tank. Apart from its function in driving the hydraulics and the air compressor, the engine is intended to provide motor power only for maneuvering the cart in the region of the aircraft. *See column 3, lines 10-14.* Further, unlike the systems called for by independent claims 1 and 9, the La Terra cart does not include a flow meter having an inlet in communication with the outlet of a pump for pumping liquid from a first tank to a second tank.

In addition, independent claim 9 calls for the engine to be adapted to use the liquid being transferred as fuel. The engine 19 of the La Terra cart is not adapted to use the aircraft fuel being transferred by the cart as fuel.

In order to anticipate a claim, a single reference must contain all of the elements of the claim. As stated above, independent claims 1 and 9 each call for numerous elements that are not contained by La Terra. Thus, La Terra does not anticipate independent claim 1 and 9 under 35 U.S.C. § 102(b).

Dependent claims 2-4, 7, 10 and 13-15 all depend, directly or indirectly, from either independent claim 1 or independent claim 9. For this reason alone, dependent claims 2-4, 7, 10

and 13-15 are not anticipated by La Terra. Further, dependent claims 2-4, 7, 10 and 13-15 call for additional elements that are not included in the La Terra cart. For example, dependent claim 2 calls for the fuel for the engine to be the liquid being transferred. As stated above, the engine 19 included in the La Terra cart does not run off the aircraft fuel being transferred. Dependent claims 4 and 10 call for the liquid being transferred to be diesel fuel. The La Terra cart is for transferring aircraft fuel. The Examiner has provided no evidence that the La Terra device is capable of transferring diesel fuel if so desired. Dependent claim 7 calls for the first tank to be a railroad tank car and the second tank to be a transport trailer. Again, these elements are not disclosed by La Terra. Contrary to the assertion of the Examiner, calling for the first tank of the inventive system to be a railroad tank car and the second tank of the inventive system to be a transport trailer are not merely introductory and functional statements of intended use; such elements do impose structure and further distinguish claims 7 and 9 from the La Terra device. The fact that the La Terra device may be capable of transferring fuel from a railroad tanker car to a transport trailer is not relevant to the anticipation analysis.

Thus, the Examiner's rejection of claims 1-4, 7, 9, 10 and 13-15 should be withdrawn.

#### **Claim Rejections – 35 U.S.C. § 103**

The Examiner next rejected claims 8 and 15 under 35 U.S.C. § 103 as being unpatentable over La Terra in view of U.S. Patent No. 6,766,837 B1 to Ruffa ("Ruffa"). In connection with this rejection, the Examiner stated: "[t]he Ruffa reference discloses another liquid transfer device (usable in aircraft fuel tanks) having an alarm 60 to indicate a full condition in the receiving tank. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the La Terra device to have an alarm in view of the teachings of the Ruffa reference to indicate a full condition in the receiving tank."

It is submitted that the Examiner's rejection of claims 8 and 15 under 35 U.S.C. § 103 is also improper. First and foremost, Ruffa is not prior art to the present invention as claimed. The present application was filed on June 20, 2003. The application that matured into the Ruffa patent was filed on September 4, 2003, after the filing date of the present application. The Ruffa patent issued on July 27, 2004. As a result, Ruffa is not prior art under 35 U.S.C. § 102. 35 U.S.C. § 102 establishes what qualifies as prior art for both anticipation and obviousness purposes.

Furthermore, even if Ruffa is citable as prior art, it does not render the subject matter of claims 8 and 15 unpatentable. For example, nothing in Ruffa would have motivated one skilled in the art to include an alarm connected to the second tank for providing an audible signal indicating a predetermined liquid level in the second tank. Ruffa discloses a fuel nozzle system using acoustical signals generated by flowing fuel to shut off the flow of fuel when the resonance of predetermined acoustical signals is acoustically sensed. The requisite suggestion to use such an apparatus in connection with the La Terra cart is absent.

Thus, the Examiner's rejection of claims 8 and 15 under 35 U.S.C. § 103 should also be withdrawn.

#### **Allowed Claims**

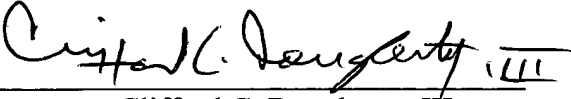
The Examiner's allowance of claims 16-22 is acknowledged and appreciated.

#### **Objection to Claims 5, 6, 11 and 12**

Dependent claims 5 and 11 have been rewritten in independent form including all the limitations of the base claim and any intervening claims. As a result, it is submitted that claims 5 and 11 should now be allowed. Dependent claims 6 and 12 depend from now independent claims 5 and 11, respectively. Accordingly, dependent claims 6 and 12 should also be allowed.

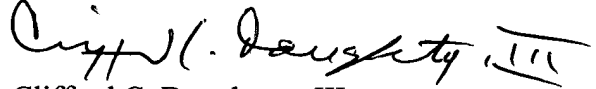
This is intended to be a complete response to the Office Action mailed October 29, 2004.

I hereby certify that this correspondence is being deposited in the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Missing Parts, Commissioner for Patents, P.O. Box 1451, Alexandria, Virginia 22313-1451.

  
Clifford C. Dougherty, III

Date: March 28, 2005

Respectfully submitted,



Clifford C. Dougherty, III

Registration No. 31,607

McAFEE & TAFT

Tenth Floor, Two Leadership Square

211 North Robinson

Oklahoma City, Oklahoma 73102

Phone: (405) 552-2302

Fax: (405) 228-7302

Email: [cliff.dougherty@mcafeetaft.com](mailto:cliff.dougherty@mcafeetaft.com)

Attorney for Applicants